

MAINE STATE LEGISLATURE

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LAWS
OF THE
STATE OF MAINE

AS PASSED BY THE
ONE HUNDRED AND THIRTEENTH LEGISLATURE
FIRST REGULAR SESSION

December 3, 1986 to June 30, 1987

Chapters 1-542

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PUBLIC LAWS

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B. The unit shall, at the direction of the chairman, investigate all complaints or allegations of fraud, illegal or improper conduct or violation of this Act or rules of the commission relating to workers' compensation insurance, benefits or programs, including those acts by employers, employees or insurers. All records, correspondence and reports of investigation in connection with actual or alleged fraud, illegal or improper conduct or violation of this Act or rules of the commission and all records, correspondence and reports of criminal prosecution or civil action shall be confidential. The confidential nature of any such record, correspondence or report shall not limit or affect the use of those materials in any prosecution or action.

Emergency clause. In view of the emergency cited in the preamble, this Act shall take effect when approved.

Effective March 24, 1987.

CHAPTER 17

H.P. 117 — L.D. 142

AN ACT to Amend the Employment Security Law Regarding Full-time Students in the Employ of Organized Camps to Conform with the Federal Unemployment Tax Act.

Be it enacted by the People of the State of Maine as follows:

Sec. 1. 26 MRSA §1043, sub-§11, ¶F, as amended by PL 1985, c. 302, is further amended to read:

F. The term "employment" shall not include:

(1) Service performed in the employ of this State, or of any political subdivision thereof, or of any instrumentality of this State or its political subdivisions, except as provided by this subsection;

(2) Service performed in the employ of the United States Government or an instrumentality of the United States immune under the Constitution of the United States from the contributions imposed by this chapter, except that on and after January 1, 1940 to the extent that the Congress of the United States has permitted states to require any instrumentalities of the United States to make payments into an unemployment compensation fund under a state unemployment compensation or employment security law, all of the provisions of this chapter shall be applicable to such instrumentalities and to services performed for such instrumentalities, in the same manner, to the same extent and on the same terms as to all other employers, employing units, individuals and services. If this State shall not be certified for any year by the Secretary of Labor under section 3304 of the Federal Internal Revenue Code, the payments required of such instrumentalities with

respect to such year shall be refunded by the commissioner from the fund in the same manner and within the same period as is provided in section 1225, subsection 5, with respect to contributions erroneously collected;

(3) Service with respect to which unemployment compensation is payable under an unemployment compensation system or employment security system established by an Act of Congress. The commissioner is authorized and directed to enter into agreements with the proper agencies under such Act of Congress, which agreements shall become effective 10 days after publication thereof in the manner provided in section 1082, subsection 2, for regulations, to provide reciprocal treatment to individuals who have, after acquiring potential rights to benefits under this chapter, acquired rights to unemployment compensation under such Act of Congress, or who have, after acquiring potential rights to unemployment compensation under such Act of Congress, acquired rights to benefits under this chapter;

(4) Agricultural labor as defined in subsection 1, except as provided in paragraph A-2;

(4-1) Agricultural labor in the harvesting of apples, if performed by an individual who is an alien, other than a citizen of a contiguous country with which the United States has an agreement with respect to unemployment compensation, admitted to the United States to perform agricultural labor pursuant to the United States Immigration and Nationality Act, Sections 214(c) and 101(a) (15) (H);

(5) Domestic service in a private home, except as provided in paragraph A-3;

(6) Service performed by an individual in the employ of his son, daughter or spouse, and service performed by a child under the age of 18 in the employ of his father or mother;

(6-1) Services performed by a student attending an elementary or secondary school while participating in a cooperative program of education and occupational training;

(9) Service performed with respect to which unemployment compensation is payable under the Railroad Unemployment Insurance Act (52 Stat. 1094);

(10) Services performed in the employ of any other state, or any political subdivision thereof, or any instrumentality of any one or more of the foregoing which is wholly owned by one or more states or political subdivisions; and any services performed in the employ of any instrumentality of one or more other states or their political subdivisions to the extent that the instrumentality is, with respect to such service, immune under the Constitution of the Unit-

ed States from the tax imposed by section 3301 of the Federal Internal Revenue Code; except as provided in paragraph A-1, subparagraph (1);

(11) Service performed in any calendar quarter in the employ of any organization exempt from income tax under section 501(a) of the Federal Internal Revenue Code, other than an organization described in section 401(a) or under section 521, of such Code, if the remuneration for such service is less than \$150;

(16) Service performed in the employ of a foreign government, including service as a consular or other officer or employee or a nondiplomatic representative;

(17) Service performed in the employ of an instrumentality wholly owned by a foreign government:

(a) If the service is of a character similar to that performed in foreign countries by employees of the United States Government or an instrumentality thereof; and

(b) If the commissioner finds that the United States Secretary of State has certified to the United States Secretary of the Treasury that the foreign government, with respect to whose instrumentality exemption is claimed, grants an equivalent exemption with respect to similar service performed in the foreign country by employees of the United States Government and of instrumentalities thereof;

(18) Service performed as a student nurse in the employ of a hospital or a nurses' training school by an individual who is enrolled and is regularly attending classes in a nurses' training school chartered or approved pursuant to state law; and service performed as an intern in the employ of a hospital by an individual who has completed a 4 years' course in a medical school chartered or approved pursuant to state law;

(19) Service performed by an individual for a person as a real estate broker, real estate salesman, an insurance agent or as an insurance solicitor, if all such service performed by such individual for such person is performed for remuneration solely by way of commission;

(20) Service performed by an individual under the age of 18 in the delivery or distribution of newspapers or shopping news, not including delivery or distribution to any point for subsequent delivery or distribution;

(21) Service performed in the employ of any organization which is excluded from the term "employment" as defined in the Federal Unemployment Tax Act solely by reason of section 3306(c) (7) or (8) if:

(a) Service performed in the employ of a church or convention or association of churches, or an organization which is operated primarily for religious purposes and which is operated, supervised, controlled or principally supported by a church or convention or association of churches;

(b) Service performed by a duly ordained, commissioned or licensed minister of a church in the exercise of his ministry or by a member of a religious order in the exercise of duties required by such order;

(c) Prior to January 1, 1978, service performed in the employ of a school primarily operated as an elementary, secondary or preparatory school for higher education, which is not an institution of higher education;

(d) Service performed in a facility conducted for the purpose of carrying out a program of rehabilitation for individuals whose earning capacity is impaired by age or physical or mental deficiency or injury or providing remunerative work for individuals who, because of their impaired physical or mental capacity, cannot be readily absorbed in the competitive labor market by an individual receiving such rehabilitation or remunerative work;

(e) Service performed as part of an unemployment work-relief or work-training program assisted or financed in whole or in part by any federal agency or an agency of a state or political subdivision thereof by an individual receiving such work-relief or work-training;

(f) Service performed in the employ of a hospital as defined in subsection 26 by a patient of such hospital;

(g) Services performed prior to January 1, 1978, for a hospital in a state prison or other state correctional institution by an inmate of such prison or correctional institution and after December 31, 1977, by an inmate of a custodial or penal institution;

(h) Service performed in the employ of a school, college or university, if such service is performed by a student who is enrolled and is regularly attending classes at such school, college or university; or

(i) Prior to January 1, 1978, service performed in the employ of a school which is not an institution of higher education; after December 31, 1977, service performed in the employ of a governmental entity referred to in paragraph A-1, subparagraph (1) if such service is performed by an individual in the exercise of duties:

- (i) As an elected official;
 - (ii) As a member of a legislative body, or a member of the judiciary, of a state or political subdivision thereof;
 - (iii) As a member of the State National Guard or Air National Guard;
 - (iv) As an employee serving on a temporary basis in case of fire, storm, snow, earthquake, flood or similar emergency; or
 - (v) In a position which, under or pursuant to the laws of this State, is designated as a major nontenured policymaking or advisory position, or a policymaking or advisory position the performance of the duties of which ordinarily does not require more than 8 hours per week;
- (29) Services performed by a hairdresser who holds a booth license and operates within another hairdressing establishment if operated under a booth rental agreement or other rental agreement;
- (30) Services performed by a barber who holds a booth license and operates within another barbering establishment if operated under a booth rental agreement or other rental agreement;
- (31) Services performed by a contract interviewer engaged in marketing research or public opinion interviewing, when such interviewing is conducted in the field or over the telephone on premises not used or controlled by the person for whom such contract services are being provided;
- (32) After December 31, 1981, services performed by an individual on a boat engaged in catching fish or other forms of aquatic animal life, unless those services would be included in the definition of "employment" for federal unemployment tax purposes under the Federal Unemployment Act, United States Code, Title 26, Section 3306(c), as it may be amended;
- (a) Such individual does not receive any cash remuneration, other than as provided in division (b);
 - (b) Such individual receives a share of the boat's, or the boats' in the case of a fishing operation involving more than one boat, catch of fish or other forms of aquatic animal life or a share of the proceeds from the sale of such catch; and
 - (c) The amount of such individual's share depends on the amount of the boat's, or the boats' in the case of a fishing operation involving more than one boat, catch of fish or other forms of aquatic animal life, but only if the operating crew of such boat, or each boat from which the individual receives

a share in the case of a fishing operation involving more than one boat, is normally made up of fewer than 7 individuals;

(33) Services performed by a member or leader of a musical group, band or orchestra or an entertainer when the services are performed under terms of a contract entered into by the leader or an agent of the musical group, band, orchestra or entertainer with an employing unit for whom the services are being performed, provided the leader or agent is not an employer by reason of subsection 9 or of section 1222, subsection 3;

(34) Services performed in the delivery or distribution of periodicals to the ultimate consumer by an individual who is compensated by receiving or retaining a commission or profit on the sale of the periodical; ~~and~~

(35) Services performed by a homemaker in the knitted outerwear industry as those terms are defined, on the effective date of this subparagraph, in the 29 Code of Federal Regulations, Part 530, Section 530.1.; and

(36) Service performed by a full-time student, as defined in subsection 30, in the employ of an organized camp if the full-time student performed services in the employ of the camp for less than 13 calendar weeks in the calendar year and the camp:

(a) Did not operate for more than 7 months in the calendar year and did not operate for more than 7 months in the preceding calendar year; or

(b) Had average gross receipts for any 6 months in the preceding calendar year which were not more than 33 1/3% of its average gross receipts for the other 6 months in the preceding calendar year.

Sec. 2. 26 MRSa §1043, sub-§30 is enacted to read:

30. Full-time student. "Full-time student" for purposes of subsection 11, paragraph F, subparagraph (36), means an individual who:

A. Is enrolled as a full-time student at an educational institution; or

B. Is between academic years or terms if:

(1) The individual was enrolled as a full-time student at an educational institution for the immediately preceding academic year or term; and

(2) There is a reasonable assurance that the individual will be so enrolled for the immediately succeeding academic year or term after the period described in subparagraph (1).

Effective September 29, 1987.

Effective March 24, 1987.

CHAPTER 18

H.P. 158 — L.D. 199

AN ACT Regarding the Maine Land Use Regulation Commission.

Emergency preamble. Whereas, Acts of the Legislature do not become effective until 90 days after adjournment unless enacted as emergencies; and

Whereas, there are several members of the Maine Land Use Regulation Commission serving beyond their statutory terms; and

Whereas, the commission is facing many important issues and requires a full contingent of members who are not in this situation; and

Whereas, in the judgment of the Legislature, these facts create an emergency within the meaning of the Constitution of Maine and require the following legislation as immediately necessary for the preservation of the public peace, health and safety; now, therefore,

Be it enacted by the People of the State of Maine as follows:

Sec. 1. 12 MRSA §683, as amended by PL 1985, c. 345, is further amended by adding at the end a new paragraph to read:

Any member who has not been renominated by the Governor within 90 days of the expiration of his term shall not continue to serve on the commission, unless the Governor notifies the Legislature in writing and within 90 days of the expiration of that member's term of his finding that extension of that member's term is required to ensure fair consideration of specific major applications pending before the commission. That member's term shall end upon final commission decisions on the specific applications identified in the Governor's communication. A vacancy during an unexpired term shall be filled as provided in this section, but only for the unexpired portion of the term.

Sec. 2. Application. The provisions of this Act shall apply to all future members of the Maine Land Use Regulation Commission. It is the intent of the Legislature that any current members of the commission whose terms expired before the effective date of this Act shall not continue to serve on the commission, unless the Governor exercises his authority under the provisions of the Maine Revised Statutes, Title 12, section 683, within 90 days of the effective date of this Act.

Emergency clause. In view of the emergency cited in the preamble, this Act shall take effect when approved.

CHAPTER 19

S.P. 40 — L.D. 28

AN ACT to Permit the Identification of Licensed Gasoline Distributors.

Be it enacted by the People of the State of Maine as follows:

Sec. 1. 36 MRSA §191, sub-§2, ¶J, as amended by PL 1985, c. 764, §4, is further amended to read:

J. The disclosure to a state agency seeking setoff of a liquidated debt against a tax refund pursuant to section 5276-A of information necessary to effectuate the intent of that section; and

Sec. 2. 36 MRSA §191, sub-§2, ¶K, as enacted by PL 1985, c. 764, §5, is amended to read:

K. The disclosure by a municipal assessor, or by the State Tax Assessor with regard to the unorganized territory, of information contained on the declaration of value form required by section 4641-B, to a person who has filed an application for abatement pursuant to section 841. Information which may be disclosed is limited to information which is relevant to the determination of just value of the property for which the form was filed; and

Sec. 3. 36 MRSA §191, sub-§2, ¶L is enacted to read:

L. The listing of gasoline distributors possessing a certificate under section 2904.

Effective September 29, 1987.

CHAPTER 20

H.P. 183 — L.D. 227

AN ACT Relating to the Administrative Council of the University of Maine System.

Be it enacted by the People of the State of Maine as follows:

Sec. 1. 1 MRSA §402, sub-§2, ¶B, as amended by PL 1985, c. 695, §1, and c. 779, §1, is repealed and the following enacted in its place:

B. Any board or commission of any state agency or authority, the Board of Trustees of the University of Maine System and any of its committees and subcommittees, the Board of Trustees of the Maine Maritime Academy and any of its committees and subcommittees, the Board of Trustees of the Maine Vocational-Technical Institute System and any of its committees